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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,210	12/09/2003	B. Thomas Barker	4002-	4618

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EXAMINER

SWIGER III, JAMES L

ART UNIT PAPER NUMBER

3733

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/731,210

Applicant(s)

BARKER ET AL.

Examiner

James L. Swiger

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 44-62 is/are pending in the application.
- 4a) Of the above claim(s) 59-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 45 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant refers to a "said member" in line two, however it is unclear to which member the applicant refers: receiver, retaining or longitudinal. Appropriate action is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44-45, 47, 49-53, and 55-56 rejected under 35 U.S.C. 102(b) as being anticipated by Sherman et al. (US Patent 5,797,911).

Sherman et al. disclose an implant apparatus having a receiver member (12) have an upper and lower portions (see Fig. 2), and a channel transverse to and communicating with said upper portion (see Fig. 2, and central cross-mark to represent

Art Unit: 3733

the transverse channel, and an interior groove (36). Sherman et al. also disclose a retaining member (45) having an inner and outer dimension that occupies said groove (see Fig. 2). Sherman et al. also disclose a longitudinal member that is at least partially within the channel. The groove above also communicates with the lower portion of the member, and the retaining member is substantially circular (45) and may be considered planar (with at least a flat surface on top). The receiver member has a head larger than the diameter of the retaining portion (see Fig. 2) and the head fits substantially between the retaining member and upper opening portion.

Claims 44-47, 49-53, 55-57 rejected under 35 U.S.C. 102(b) as being anticipated by Morrison et al. (US Patent 5,891,145). Morrison discloses an implant apparatus comprising a receiver member (30), with a channel in the middle (at the location of the longitudinal member (80) that is considered transverse, and an interior groove at the lower portion of the member. The retaining member is also substantially circular (Fig. 3) and is substantially planar (Fig. 8b), and is capable of insubstantial movement in a radial movement if secured, and has a bone anchor head that is larger than the inner dimension of the receiver member, which at also substantially surrounds the upper portion of the bone anchor (see near 50 in Fig. 2). Also, the closure member (70) may be a set screw.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3733

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. '911 in view of Nichols (US Patent 6,090,111). Sherman et al. disclose the claimed invention except for a circular ring member that has a gap. Nichols discloses a circular ring member with a gap (42) that allows the ring to be contracted and secure the fastener in place (Col. 4, lines 7-15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Sherman et al. having at least a split ring member in view of Nichols to better secure the fastener during use of the device allowing contraction.

Claims 54 and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sherman et al. '911 in view of Barker et al. (US Patent 6,280,442). Sherman et al. disclose the claimed invention except for a channel having reverse angle threads. Barker et al. disclose reverse angle threads for better securing the receiver member (Col. 5, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Sherman et al. having at least reverse angle threads in view of Barker et al. to better secure the receiver member in use of the device.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3733


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

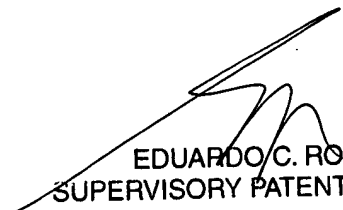
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 10/2/06

JLS



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER